

# HOUSE BILL No. 1182

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5-6.

**Synopsis:** Sales and use tax deduction. Provides a method for determining the amount of a retail merchant's state sales and use tax deduction or refund when it is bad debt related to a private label credit of the retail merchant.

**Effective:** January 1, 2016 (retroactive).

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## Frizzell

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January 7, 2016, read first time and referred to Committee on Ways and Means.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1182

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 6-2.5-6-9, AS AMENDED BY P.L.109-2015,  
2       SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JANUARY 1, 2016 (RETROACTIVE)]: Sec. 9. (a) In determining the  
4       amount of state gross retail and use taxes which a retail merchant must  
5       remit under section 7 of this chapter, the retail merchant shall, subject  
6       to subsections (c) and (d) **and section 9.5 of this chapter**, deduct from  
7       the retail merchant's gross retail income from retail transactions made  
8       during a particular reporting period, an amount equal to the retail  
9       merchant's receivables which:  
10       (1) resulted from retail transactions in which the retail merchant  
11       did not collect the state gross retail or use tax from the purchaser;  
12       (2) resulted from retail transactions on which the retail merchant  
13       has previously paid the state gross retail or use tax liability to the  
14       department; and  
15       (3) were written off as an uncollectible debt for federal tax  
16       purposes under Section 166 of the Internal Revenue Code during  
17       the particular reporting period.



(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection (d)(6), include the amount collected as part of the retail merchant's gross retail income from retail transactions for the particular reporting period in which the retail merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after December 31, 2006. As used in this subsection, "affiliated group" means any combination of the following:

(1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code (except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%)) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.

(2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

**Except as provided in section 9.5 of this chapter**, the right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a) **and section 9.5 of this chapter**:

(1) The deduction does not include interest.

(2) The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:

(A) financing charges or interest;

(B) sales or use taxes charged on the purchase price;

(C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;

(D) expenses incurred in attempting to collect any debt; and

(E) repossessed property.

(3) **Except as provided in section 9.5 of this chapter**, the deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns



may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

(4) If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for the refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

(5) If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

(6) For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any other charges.

(7) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

SECTION 2. IC 6-2.5-6-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]: **Sec. 9.5. (a) For purposes of this section, the following definitions apply:**

**(1) "Bad debt" means amounts due on the accounts or receivables that are charged off on the books and records of a lender.**

**(2) "Lender" means any person, or affiliate of a person, who owns a private label credit card account, or an interest in a private label credit card receivable, that:**

**(A) the person purchased directly from a retail merchant who remitted the tax imposed under this chapter or its affiliates, or purchased from a third party; or**



(B) the person originated under that person's program agreement or other contractual arrangement with the retail merchant who remitted the tax imposed under this chapter or its affiliates.

(3) "Private label credit card" means any charge card or account or credit card or account that:

(A) carries, refers to, or is branded with the name or logo of a retail merchant; and

(B) can be used for purchases from the retail merchant whose name or logo appears on the card or account or for purchases from any of the retail merchant's affiliates or franchisees.

(b) For purposes of claiming a deduction, or obtaining a refund, under section 9 of this chapter related to bad debt on a private label credit card, the following conditions must be satisfied:

(1) A retail merchant may claim a deduction on a return or obtain a refund of the tax previously reported by the retail merchant on the unpaid balance due on the accounts or receivables that are charged off as a bad debt on the books and records of the lender if the accounts or receivables have been charged off as bad debts on the lender's books and records after December 31, 2014.

(2) The deduction or refund for the accounts or receivables must include all credit sale transaction amounts outstanding in the account or receivable at the time the account or receivable is charged off, regardless of the date on which the credit sale transaction actually occurred.

(c) If a deduction or a refund is covered by this section, the retail merchant shall maintain adequate books, records, or other documentation supporting the charge off of the accounts.

(d) If a retail merchant remits sales or use tax to Indiana and one (1) or more other states, the retail merchant may use an apportionment method to substantiate the amount of tax imposed under this chapter included in the bad debts to which the deduction or refund applies. The apportionment method must use:

(1) the retail merchant's Indiana and outside Indiana sales;

(2) the retail merchant's taxable and nontaxable sales; and

(3) the amount of tax the retail merchant remitted to Indiana.

Alternatively, the retail merchant may treat a specified percentage of the private label credit card accounts as giving rise to a deduction or refund under this section so long as the percentage is derived from a sampling of the retail merchant's records in



1 accordance with a methodology agreed to by the department and  
2 the retail merchant.

3 (e) If a retail merchant deducts a receivable under this section  
4 and the retail merchant or the lender subsequently collects all or  
5 part of that receivable, the retail merchant shall, subject to section  
6 9(d)(6) of this chapter, include the amount collected as part of the  
7 retail merchant's gross retail income from retail transactions for  
8 the particular reporting period in which the retail merchant or  
9 lender makes the collection.

10 (f) This subsection does not authorize any credit or refund with  
11 respect to sales by any person other than the retail merchant whose  
12 name or logo appears on the private label credit card or account,  
13 or any of the retail merchant's affiliates or franchisees.

14 SECTION 3. An emergency is declared for this act.

